Confidentiality of Student Information

The information below represents only a synopsis of the federal regulations and does not include state requirements. It may be important to view the entire document to fully understand the legal requirements. (see links to full information www.ed.gov/policy/gen/guid/fpco/ferpa/students.html or www.law.cornell.edu/uscode/html/uscode20/usc_sec_20_00001232---g000-.html)

Why is confidentiality important?

The Family Educational Rights and Privacy Act (FERPA) of 1974 is a federal law establishing an array of confidentiality rights for students and families. This law is required to be upheld by all school employees. There are significant sanctions and penalties that can be imposed for violating this law. In fact one of the conditions for receiving federal funds requires procedures and adherence to FERPA.

Reasons for confidentiality under FERPA:

Confidentiality of student information protects embarrassing personal information from disclosure. This is particularly true where the wrongful release of information about children and families might also lead to discrimination or cause prejudicial treatment.

The confidential provision also protects family security. This maybe pertain to; personal safety or job security where the release of specific information might lead to loss of employment.

Finally, confidentiality needs to be assured for families and students to seek needed services without fear of retaliation, discrimination, prejudicial treatment, or stigmatization. If students or families believe confidential information will not be maintained, they may be less likely to seek needed mental health services, free lunch, exceptional children services, or a host of other critical services.

What are educational records?

Educational records are those records that are directly related to a student that contain personally identifiable information and are maintained by the school or district. Records are kept in the sole possession of the institution, are used only as a memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
Records can be:

- Written documents
- Computer media
- Microfilm and microfiche
- Video, or audio tapes/CDs
- Film
- Photographs

Are there limits to FERPA?

There are important limits to FERPA that permit the following:

- Disclosure to school officials who have been determined to have legitimate educational interests as specified under the rules of FERPA.
- The information is designated as directory information by the school
- Disclosure is pursuant to a lawfully issued court order or subpoena
- The student is enrolling in another school and information needs to be shared
- Disclosure to local or state educational authorities auditing or enforcing federal or state programs
- Disclosure to the parents of a student who is a dependent and not of emancipated age
- Limits would also exist where life threatening or criminal activities are divulged, such as; suicide threats, drug and alcohol use on campus, and abuse.

Annual notice to parents and students

Each year the district provides parents or emancipated students a confidentiality notification. This notification typically speaks to their right to review and inspect records for accuracy and general information. It provides information on:

- How to file a complaint of an alleged violation
- Consent to disclose specific types of student directory information
- A description of who is considered to be a school official and what is considered legitimate educational interest.
- Information about who to contact to seek access or amendment of educational records
Emancipated youth

Students’ rather than parents’ permission or consent
For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

It is also important for the substitute teacher to be aware of a companion U.S. code to FERPA that places Limits on surveys:

Under the U.S. Code 20 Protection of Pupil Rights include the following limits on surveys, analysis, and evaluations:

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

(1) political affiliations or beliefs of the student or the student’s parent;
(2) mental or psychological problems of the student’s family;
(3) sex behavior or attitudes;
(4) illegal, anti-social, self-incriminating, or demeaning behavior;
(5) critical appraisals of other individuals with whom respondents have close family relationships;
(6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
(7) religious practices, affiliations, or beliefs of the student or student’s parent; or
(8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an un-emancipated minor, without the prior written consent of the parent.

Examples of violations of FERPA (Note that these are all actual cases of violations with slight modifications to protect those involved)

1. While shopping at the grocery store, a teacher runs into a parent who wishes to discuss the discipline of a child at school who is not her child. The teacher proceeds to tell the parent that the child in question is a child with a Behavioral Disability and that child’s IEP requires a different approach to discipline. She then proceeds to also tell the parent what discipline was given.

Mistakes made: the statement made by the teacher concerning the child’s disability and the discipline are both violations of FERPA.
2. A teacher throws away duplicate educational records that contained due process information on the placement of a special education student. The paper was thrown away next to the office copier. An ecologically minded teacher later comes in to the office and takes the paper out of the trash. The teacher later stated that she believed we should not waste paper and picked up the paper so the back side might be by used by students in her class for an art project. The papers then arrive at various homes in the form of student art work.

*Mistakes made:* The first teacher should have shredded the unneeded copies. No matter how well intended the second teacher should not have used trashed paper for her student’s projects. There was obviously a reason these papers were trashed.

3. An itinerant instructor travels from school to school. After leaving Elm elementary school the teacher travels to Central elementary. A Central teacher has a biological child who attends Elm elementary. Because of recent discipline issues with some of the special education students, the teacher at Central begins to ask the itinerant instructor about the behavior of some of the children at Elm elementary. The itinerant begins to share some of the concerns and specifics about the IEPs of those children who were involved in a recent behavioral incident.

*Mistakes made:* Being a teacher in the same systems gives no official legitimate right for confidential information to be shared. The teacher at Central elementary by asking for that information and the itinerant teacher by sharing confidential information were both in violation of FERPA.

4. A school administrator maintains confidential student data on a laptop computer. During a hosted cheerleading competition the computer used by the judge’s breaks and the school administrator loans their office laptop computer to the judges for the day. The loaned computer is not password protected and the confidential student data is not secure allowing the judges to view discipline records on various students in the building.

*Mistakes made:* Electronic data is afforded the same protection of the law and school personnel are required to safe guard this data with password, encryption, or other protective methods.

5. Teachers at the high school are required to put student attendance data in the computerized tracking system on a period by period basis. In order to preserve
Instructional time one teacher selected students to put that data into the computer while the teacher continued with instruction. In the attendance data are student’s names, addresses, phone numbers, family contact information, social security numbers, grades, health information, discipline reports, etc.

*Mistakes made: This is a clear violation of FERPA. Students are not allowed access to this type of data. Even though the teacher was well intended students should never have been permitted access to this secured system.*

Questions:

1. **The Family Educational Rights and Privacy Act (FERPA) is a Federal Law?**
   a. True
   b. False
2. **The confidentiality provision is for the purpose of:**
   a. Protecting families and students from retaliation
   b. Protecting families and students from discrimination
   c. Protecting families and students from prejudicial treatment
   d. All of the above
3. **Which of the following are confidential records?**
   a. Written documents
   b. Computer media
   c. Video and photographs
   d. b and c
   e. a, b, and c
4. **At what age are students emancipated and in charge of their own records?**
   a. Age 14
   b. Age 16
   c. Age 18
   d. Parents always are in charge of student’s records
5. **The following is a violation of the Family Educational Rights and Privacy Act (True or False).**

   A teacher explains to the PTA that “Jimmy Smith’s” behavior will not lead to suspension because he has a disability.
   a. True
   b. False